



July 5, 1999

Mr. Don Ballard  
Assistant Attorney General  
Open Records Coordinator  
P.O. Box 12548  
Austin, Texas 78711-2548

OR99-1858

Dear Mr. Ballard:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your requests were assigned ID# 125510 and ID# 125645.

The Office of the Attorney General (the "OAG") received two requests for information concerning Baylor Health Care System and Texas Health Resources. The Consumer Protection Division of the Office of the Attorney General ("CPD") has submitted to this division a representative sample of the requested information.<sup>1</sup> CPD claims that the requested information is excepted from disclosure under sections 552.101 and 552.103 of the Government Code. We have considered the exceptions CPD claims and reviewed the submitted information.

First, CPD argues that the requested information is confidential under section 552.101. Section 552.101 excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." This section encompasses information protected by other statutes, including section 15.10(i) of the Business and

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<sup>1</sup> We assume that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

Commerce Code. CPD states that the requested information was produced in response to Civil Investigative Demands ("CIDs") issued under section 15.10(i) of the Business and Commerce Code, which provides in part

(1) Except as provided in this section or ordered by a court for good cause shown, no documentary material, answers to interrogatories or transcripts of oral testimony, or copies or contents thereof, shall be available for examination or used by any person without the consent of the person who produced the material, answers, or testimony and, in the case of any product of discovery, of the person from whom the discovery was obtained.<sup>2</sup>

Bus. & Com. Code § 15.10(i) (footnote added). The exceptions to confidentiality in section 15.10(i) do not apply here.<sup>3</sup> Therefore, we agree that CPD must withhold from disclosure the information it obtained pursuant to the CIDs.

CPD also argues that the CIDs themselves and the correspondence leading up to the CIDs are confidential under section 15.10(i). CPD cites *State v. Lowry*, 802 S.W. 2d 669 (Tex. 1991), in support of this argument. *Lowry* does not support CPD's argument. The CIDs themselves and the correspondence leading up to the CIDs are not confidential under section 15.10(i).

Finally, CPD argues that all of the requested information is excepted from disclosure under section 552.103. Section 552.103(a) excepts from disclosure information relating to litigation to which a governmental body is or may be a party. The governmental body has the burden of providing relevant facts and documents to show that section 552.103(a) is applicable in a particular situation. In order to meet this burden, the governmental body must show that (1) litigation is pending or reasonably anticipated, and (2) the information at issue is related to that litigation. *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479 (Tex. App.—Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990). The governmental body must meet both prongs of this test for information to be excepted under 552.103(a).

We conclude that CPD has met its burden under section 552.103(a) by demonstrating that the requested information relates to reasonably anticipated litigation. Section 552.103(a)

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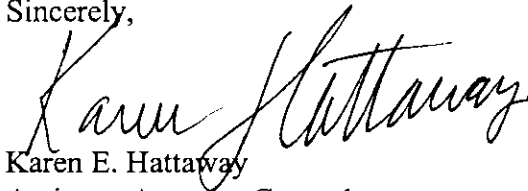
<sup>2</sup>We assume the person who produced the information at issue has not consented to the release of the information.

<sup>3</sup>The exceptions permit the attorney general to make information available for use in investigations, judicial proceedings, and criminal law enforcement.

does not, however, apply to information that has either been obtained from or provided to the opposing party in the anticipated litigation. Open Records Decision Nos. 349 (1982), 320 (1982). Thus, the CIDs and the correspondence leading up to the CIDs are not excepted from disclosure under section 552.103(a). Because the CIDs and the correspondence leading up to the CIDs are not excepted from disclosure under section 552.101 or section 552.103(a), CPD must release these documents.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our division.

Sincerely,

A handwritten signature in cursive script, reading "Karen Hattaway".

Karen E. Hattaway  
Assistant Attorney General  
Open Records Division

KEH/ch

Ref: ID# 125510

Encl: Submitted documents

cc: Mr. Charles Ornstein  
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